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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Maria Holzman,

No. CV-13-00627-PHX-NVW

10 Plaintiff,

**ORDER**

11 vs.

12 Carolyn W. Colvin, Acting Commissioner  
13 of Social Security,

14 Defendant.  
15

16 Plaintiff Maria Holzman seeks review under 42 U.S.C. § 405(g) of the final  
17 decision of the Commissioner of Social Security (“the Commissioner”), which denied her  
18 disability insurance benefits under sections 216(i) and 223(d) of the Social Security Act.  
19 Because the decision of the Administrative Law Judge (“ALJ”) is not supported by  
20 substantial evidence and is based on legal error, the Commissioner’s decision will be  
21 vacated and the matter remanded for further administrative proceedings.

22 **I. BACKGROUND**

23 **A. Factual Background**

24 Holzman was born in July 1959 and was 49 years old on the alleged disability  
25 onset date. She has been diagnosed with numerous conditions including, but not limited  
26 to, systemic lupus erythematosus (“SLE”), rheumatoid arthritis, hiatal hernia with gastro  
27 esophageal reflux disease (“GERD”), asthma, breast cancer in remission, and  
28 fibromyalgia.

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2 Holzman has a bachelor's degree in sociology. She worked as a teacher's aide for  
3 four and a half years, until September 2008 when she kept getting pneumonias and  
4 bronchitis. For about a month in 1999, she worked as an office worker answering  
5 telephones.

6 **B. Procedural History**

7 On April 26, 2010, Holzman protectively applied for disability insurance benefits,  
8 alleging disability beginning September 10, 2008. On December 9, 2011, she appeared  
9 with her attorney and testified at a hearing before the ALJ. A vocational expert also  
10 testified.

11 On January 3, 2012, the ALJ issued a decision that Holzman was not disabled  
12 within the meaning of the Social Security Act. The Appeals Council denied Holzman's  
13 request for review of the hearing decision, making the ALJ's decision the  
14 Commissioner's final decision. On March 27, 2013, Holzman sought review by this  
15 Court.

16 In her Reply Brief (Doc. 13), Holzman summarizes the issues she presents on  
17 appeal as follows:

18 (1) Whether the ALJ went through the proper analysis and  
19 considered listings 14.02 for lupus and 14.09 for arthritis;

20 (2) Whether the ALJ erred by failing to assess Ms. Holzman's  
21 fibromyalgia and celiac disease; and

22 (3) Whether the ALJ justified his determination that Ms.  
23 Holzman is not credible.

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25 **II. STANDARD OF REVIEW**

26 The district court reviews only those issues raised by the party challenging the  
27 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court  
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2 may set aside the Commissioner's disability determination only if the determination is  
3 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d  
4 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a  
5 preponderance, and relevant evidence that a reasonable person might accept as adequate  
6 to support a conclusion considering the record as a whole. *Id.* In determining whether  
7 substantial evidence supports a decision, the court must consider the record as a whole  
8 and may not affirm simply by isolating a "specific quantum of supporting evidence." *Id.*  
9 As a general rule, "[w]here the evidence is susceptible to more than one rational  
10 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be  
11 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

12 Harmless error principles apply in the Social Security Act context. *Molina v.*  
13 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains  
14 substantial evidence supporting the ALJ's decision and the error does not affect the  
15 ultimate nondisability determination. *Id.* The claimant usually bears the burden of  
16 showing that an error is harmful. *Id.* at 1111.

### 17 **III. FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

18 To determine whether a claimant is disabled for purposes of the Social Security  
19 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears  
20 the burden of proof on the first four steps, but at step five, the burden shifts to the  
21 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

22 At the first step, the ALJ determines whether the claimant is engaging in  
23 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not  
24 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant  
25 has a "severe" medically determinable physical or mental impairment.  
26 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step  
27 three, the ALJ considers whether the claimant's impairment or combination of  
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2 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P  
3 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to  
4 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the  
5 claimant's residual functional capacity and determines whether the claimant is still  
6 capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not  
7 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,  
8 where he determines whether the claimant can perform any other work based on the  
9 claimant's residual functional capacity, age, education, and work experience.  
10 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is  
11 disabled. *Id.*

12 At step one, the ALJ found that Holzman meets the insured status requirements of  
13 the Social Security Act through December 31, 2013, and that she has not engaged in  
14 substantial gainful activity since September 10, 2008, the alleged onset date. At step two,  
15 the ALJ found that Holzman has the following severe impairments: GERD, SLE,  
16 SIADH, breast cancer in remission, arthritis, depression, asthma, hypertension, hiatal  
17 hernia with GERD, and rheumatoid arthritis. At step three, the ALJ determined that  
18 Holzman does not have an impairment or combination of impairments that meets or  
19 medically equals an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404.

20 At step four, the ALJ found that Holzman:

21 has the residual functional capacity to perform light work as  
22 defined in 20 CFR 404.1567(b) with the following  
23 exceptions: can occasionally climb ladders, ropes, or  
24 scaffolds; can frequently climb ramps or stairs; can  
25 occasionally crawl; should avoid concentrated exposure to  
26 extreme temperatures, both hot and cold, extreme direct  
27 sunlight, irritants such as fumes, odors, dusts and gases; avoid  
28 concentrated exposure to moving machinery and unprotected  
height; and limited to simple, unskilled work.

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2 The ALJ further found that Holzman is capable of performing past relevant work as a  
3 teacher aide II and office worker. Alternatively, the ALJ concluded that, considering  
4 Holzman's age, education, work experience, and residual functional capacity, there are  
5 other jobs that exist in significant numbers in the national economy that Holzman could  
6 perform.

7 **IV. ANALYSIS**

8 **A. The ALJ Failed to Consider Listings 14.02 for Lupus and 14.09 for**  
9 **Inflammatory Arthritis.**

10 At step three of the five-step sequential evaluation process, the ALJ must consider  
11 whether the claimant's impairment or combination of impairments meets or medically  
12 equals an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404.  
13 § 404.1520(a)(4)(iii). Here, at step three, the ALJ determined that Holzman does not  
14 have an impairment or combination of impairments that meets or medically equals an  
15 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404, but stated reasons  
16 relevant only to whether the severity of Holzman's mental impairment satisfied a listing.

17 The ALJ found that Holzman's severe impairments include lupus (SLE), but did  
18 not provide any analysis of whether this impairment alone or in combination with other  
19 impairments meets or medically equals listing 14.02 (systemic lupus erythematosus).  
20 The ALJ also found that Holzman's severe impairments include rheumatoid arthritis, but  
21 did not provide any analysis of whether this impairment alone or in combination with  
22 other impairments meets or medically equals listing 14.09 (inflammatory arthritis).  
23 Listing 14.09 expressly includes rheumatoid arthritis.

24 The Court cannot evaluate whether the ALJ's determination that Holzman does  
25 not have an impairment or combination of impairments that meets or medically equals a  
26 listing is based on substantial evidence because the ALJ's hearing decision does not  
27 provide his analysis, if any.

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2 **B. The ALJ Erred by Failing to Assess Ms. Holzman's Fibromyalgia and**  
3 **Celiac Disease.**

4 Holzman's allegations of severe impairment due to fibromyalgia and celiac  
5 disease were presented to the ALJ, and he excluded them from the list of severe  
6 impairments without explanation. He carefully explained why he did not consider her  
7 alleged poor concentration and poor vision to be severe impairments, but provided no  
8 explanation regarding fibromyalgia and celiac disease even though he mentions in  
9 passing elsewhere that she has fibromyalgia.

10 The Court cannot evaluate whether the ALJ's determination that Holzman is not  
11 severely impaired by fibromyalgia and celiac disease because the ALJ's hearing decision  
12 does not provide his analysis, if any.

13 **C. The ALJ Justified His Determination that Ms. Holzman Is Not Fully**  
14 **Credible.**

15 In evaluating the credibility of a claimant's testimony regarding subjective pain or  
16 other symptoms, such as fatigue, the ALJ is required to engage in a two-step analysis: (1)  
17 determine whether the claimant presented objective medical evidence of an impairment  
18 that could reasonably be expected to produce some degree of the pain or other symptoms  
19 alleged; and, if so with no evidence of malingering, (2) reject the claimant's testimony  
20 about the severity of the symptoms only by giving specific, clear, and convincing reasons  
21 for the rejection. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

22 First, the ALJ found that Holzman's medically determinable impairments could  
23 reasonably be expected to cause the alleged symptoms. Second, the ALJ found  
24 Holzman's statements regarding the intensity, persistence, and limiting effects of the  
25 symptoms not credible to the extent they are inconsistent with the ALJ's residual  
26 functional capacity assessment.

27 Holzman contends that she is unable to perform light work with the limitations the  
28 ALJ identified in his residual functional capacity determination. Holzman testified, "I

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2 live on my recliner because I hurt all the time.” She testified that she needs to elevate her  
3 feet and change positions frequently. She also testified that she drives to get mail from  
4 the mailbox about five or six houses from hers. She said she has difficulty gripping  
5 things, opening jars, and writing, but she is able to lift a gallon of milk and use a  
6 computer and computer mouse. She said she has difficulty sleeping at night, does not  
7 nap, and rests all day. She testified that she has pain in all of her joints. She said that she  
8 goes to a nearby grocery store if she needs one or two items, and her husband does the  
9 weekly grocery shopping. But she also testified she can shower, wash her hair, dress  
10 herself, put on her shoes, tie shoelaces, and drive. Further, Holzman testified that in the  
11 last year she had developed memory problems. She said she has poor concentration, gets  
12 lost driving places, and while watching a movie or television she “spaces out.”

13 The ALJ observed that Holzman’s “allegations regarding the severity of her  
14 symptoms and limitations is diminished because those allegations are greater than  
15 expected in light of the objective evidence of record.” The ALJ noted that Holzman  
16 received only routine conservative treatment for her impairments. He also stated that  
17 treatments for arthritis, fibromyalgia, chronic fatigue, and asthma appeared to be  
18 successful. Holzman contends her “major issue is fibromyalgia, which has no treatment  
19 beyond medication and rest,” but the ALJ referred to rheumatology treatment notes  
20 (without record citation) showing that Holzman’s fibromyalgia was being treated  
21 successfully with gabapentin.

22 Holzman also contends that she “regularly went to the hospital” for pulmonary  
23 issues and recurrent pneumonia and “there is no commonly prescribed treatment she did  
24 not perform for her conditions.” But the records she cites show only that she was  
25 hospitalized for pneumonia December 21-26, 2008, during which she reported previous  
26 hospitalizations. The discharge report by Michael Schlossberg, M.D., states that, upon  
27 consultation with a pulmonologist, “the overall clinical picture was most consistent with  
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2 aspiration pneumonia related to the underlying hiatal hernia” and that he told the patient  
3 “she should be evaluated by a surgeon for repair of the hiatal hernia.”

4 The ALJ also considered that Holzman’s husband reported that she is able to  
5 prepare simple meals, do laundry and housework, drive, and walk ½ block. Although the  
6 ALJ concluded that Holzman’s husband’s statement contradicted her testimony that her  
7 husband does the chores such as cooking and housekeeping, in fact Holzman did not  
8 directly answer the question whether she is able to do any cooking or housecleaning.  
9 Instead, she said that she “Swiffers” and picks up “a little bit”, and her house is not clean.  
10 The ALJ’s error is harmless because whether Holzman’s husband does any chores is  
11 irrelevant. Holzman’s husband reported that Holzman is able to do more than she admits  
12 despite limitations recognized by the ALJ.

13 Thus, the ALJ gave specific, clear, and convincing reasons for finding Holzman’s  
14 subjective complaints less than fully credible.

15 **D. This Case Will Be Remanded for Further Administrative Proceedings.**

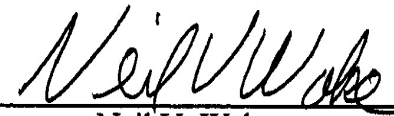
16 If the ALJ’s decision is not supported by substantial evidence or suffers from legal  
17 error, the court has discretion to reverse and remand either for an award of benefits or for  
18 further administrative proceedings. *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir.  
19 1996); *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). “Remand for further  
20 proceedings is appropriate if enhancement of the record would be useful.” *Benecke v.*  
21 *Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004). “Conversely, where the record has been  
22 developed fully and further administrative proceedings would serve no useful purpose,  
23 the district court should remand for an immediate award of benefits.” *Id.* (citing *Smolen*,  
24 80 F.3d at 1292).

25 Here, the record has not been developed fully, and further administrative  
26 proceedings are required. Therefore, Holzman’s request for remand for immediate award  
27 of benefits will be denied.  
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2 IT IS THEREFORE ORDERED that the final decision of the Commissioner of  
3 Social Security is VACATED and this case is REMANDED for further proceedings  
4 consistent with this opinion. The Clerk shall enter judgment accordingly and shall  
5 terminate this case.

6 Dated this 14th day of January, 2014.

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11 Neil V. Wake  
12 United States District Judge  
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